

1999 DRAFTING REQUEST

Senate Amendment (SA-SSA(LRBs0372/1)-SB125)

Received: 03/13/2000

Received By: nelsorp1

Wanted: 03/13/2000

Identical to LRB:

For: Gary George (608) 266-2500

By/Representing: Dan

This file may be shown to any legislator: NO

Drafter: nelsorp1

May Contact:

Alt. Drafters:

Subject: **Drunk Driving - alcohol level**
 Drunk Driving - penalties
 Drunk Driving - procedures

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

Counting per Ott bill and technical changes

Instructions:

See a1773 plus -0791

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	nelsorp1 03/13/2000	gilfokm 03/13/2000		_____ _____			
/1			hhagen 03/13/2000	_____ _____	lrb_docadmin 03/14/2000	lrb_docadmin 03/14/2000	

FE Sent For:

<END>

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/?	nelsorp1	1-3-13 KMG	Nh3/13	Nh3/13 RN3/13			

FE Sent For:

<END>

**SENATE AMENDMENT ,
TO SENATE SUBSTITUTE AMENDMENT (LRBs0372/1),
TO 1999 SENATE BILL 125**

1 At the locations indicated, amend the substitute amendment as follows:

2 ✓ 1. Page 8, line 23: after that line insert:

3 "SECTION 16d. 342.12 (4) (a) of the statutes is amended to read:

4 342.12 (4) (a) The district attorney shall notify the department when he or she
5 files a criminal complaint against a person who has been arrested for violating s.
6 346.63 (1) or (2), 940.09 (1) or 940.25 and who has 2 3 or more prior convictions,
7 suspensions or revocations, as counted under s. 343.307 (1). Except as provided
8 under par. (c), the department may not issue a certificate of title transferring
9 ownership of any the motor vehicle owned by the person and involved in the violation
10 upon receipt of a notice under this subsection until the court assigned to hear the
11 criminal complaint issues an order permitting the department to issue a certificate
12 of title.

1 **SECTION 16g.** 342.12 (4) (b) of the statutes is amended to read:

2 342.12 (4) (b) Except as provided under par. (c), the department may not issue
3 a certificate of title transferring ownership of ~~any~~ the motor vehicle owned by a
4 person and involved in the violation upon receipt of a notice of intent to revoke the
5 person's operating privilege under s. 343.305 (9) (a), if the person has ~~2~~ 3 or more
6 prior convictions, suspensions or revocations, as counted under s. 343.307 (1), until
7 the court assigned to the hearing under s. 343.305 (9) issues an order permitting the
8 department to issue a certificate of title.

9 **SECTION 16j.** 342.12 (4) (c) 1. (intro.) of the statutes is amended to read:

10 342.12 (4) (c) 1. (intro.) The department shall issue a certificate of title
11 transferring ownership of a motor vehicle that was ~~owned by a person who has~~
12 ~~received a notice of intent to revoke the person's operating privilege under s. 343.305~~
13 ~~(9) (a) or has been arrested for violating s. 346.63 (1) or (2), 940.09 (1) or 940.25 and~~
14 ~~who has 2 or more prior convictions, suspensions or revocations, as counted under~~
15 ~~s. 343.307 (1), subject to the restrictions under par. (a) or (b) if all of the following~~
16 conditions are met:"

17 ✓ *#. Page 10, line 24: delete lines 24 and 25 and substitute:*

17 ✓ **2.** Page 11, line 6: delete lines 6 to 16.

Ⓢ (Insert
10-24)

18 ✓ **3.** Page 13, line 14: delete "by certified mail to the owner of the motor vehicle
19 and".

20 ✓ **4.** Page 15, line 20: delete the material beginning with that line and ending
21 with page 16, line 3.

22 ✓ *#. Page 17, line 5: delete lines 5 and 6 and substitute:*

22 ✓ **5.** Page 17, line 17: delete the material beginning with "After" and ending with
23 "343.307." on line 20.

Ⓢ (Insert
17-5)

24 ✓ **6.** Page 18, line 11: delete lines 11 to 25 and substitute:

1 "343.307 (4) (a) When counting convictions, revocations and suspensions under
2 this section, each conviction, revocation and suspension listed under sub. (2) shall
3 be counted as provided in this subsection if the current offense or refusal involves
4 driving or operating a commercial motor vehicle or being on duty time with respect
5 to a commercial motor vehicle. For all other offenses or refusals, each conviction,
6 revocation or suspension listed under sub. (1) shall be counted as provided in this
7 subsection. When counting convictions, revocations or suspensions listed under sub.
8 (1) or (2), all of the following apply:

9 1. All ~~offenses and~~ ^{convictions, revocations and suspensions resulting from} refusals committed by a person after December 31, 1988,
10 shall be counted, except as provided in subd. 2.

11 2. All convictions, at any time, for violating s. 940.09 (1) or 940.25 or a
12 substantially similar law of another state shall be counted.

13 (b) The time periods under this subsection shall be measured from the dates
14 of offenses or refusals that resulted in the convictions, revocations or suspensions."

15 ✓ #. Page 19, line 2: delete lines 2 and 3 and substitute:
16 ✓ 7. Page 27, line 23: after that line insert: (insert 19-2)

16 "SECTION 62d. 346.65 (6) (k) of the statutes is amended to read:

17 346.65 (6) (k) Except as provided in par. (km), no person may transfer
18 ownership of any motor vehicle that is subject to immobilization or seizure or to
19 equipping with an ignition interlock device under this subsection or make
20 application for a new certificate of title under s. 342.18 for the motor vehicle unless
21 the court determines that the transfer is in good faith and not for the purpose of or
22 with the effect of defeating the purposes of this subsection. The department may
23 cancel a title or refuse to issue a new certificate of title in the name of the transferee
24 as owner to any person who violates this paragraph.

✓ #. Page 19, line 23: delete lines 23 and 24 and substitute:
✓ #. Page 24, line 6: delete lines 6 and 7 and substitute:
→ INS. 24-17 (insert 19-23)
(insert 24-6)

INS
21-11

SECTION 62f. 346.65 (6) (km) of the statutes is amended to read:

346.65 (6) (km) If a person purchases a motor vehicle in good faith and without knowledge that the motor vehicle was subject to ~~immobilization or seizure or to equipping with an ignition interlock device~~ under this subsection and the department has no valid reason for not issuing a certificate of title other than the prohibition under par. (k), the department shall issue a new certificate of title in the name of the person requesting the new certificate of title if at the time of the purchase of the motor vehicle the certificate of title did not contain the notation stamped on the certificate of title by the clerk of circuit court under par. (a) 2m. and if the person submits the affidavit required under s. 342.12 (4) (c) 1. c.

SECTION 62h. 346.65 (6) (m) of the statutes is repealed.”.

8. Page 29, line 17: delete lines 17 to 20.

9. Page 30, line 3: delete “(b)” and substitute “(a)”.

10. Page 30, line 5: delete “(c)” and substitute “(b)”.

11. Page 36, line 24: delete “, (1q) (b) 3. and (h),” and substitute “and (1q) (b) 3.,”.

12. Page 36, line 24: delete “(8)”.

13. Page 36, line 25: delete “(c) 1.,”.

14. Page 37, line 9: after “sections” insert “342.12 (4) (a), (b) and (c) 1. (intro.),”.

15. Page 37, line 10: delete “and (d)” and substitute “, (d), (k), (km) and (m)”.

16. Page 38, line 7: after “sections” insert “342.12 (4) (a), (b) and (c) 1. (intro.),”.

17. Page 38, line 8: delete “and (d)” and substitute “, (d), (k), (km) and (m)”.

(END)

ASSEMBLY BILL 665

Insert

harm or death while driving while under the influence of an intoxicant or while having a prohibited alcohol concentration, that offense is counted as a prior OWI offense and the penalties listed above apply.

Currently, if a court determines that a person improperly refused to submit to a test to determine the alcohol concentration in the person's blood and the person has one prior OWI conviction within the previous ten-year period, the court revokes the person's operating privilege for two years. Under this bill, in addition to counting OWI offenses committed within the previous ten-year period, if the person has, at any time in his or her life, caused great bodily harm or death while driving while under the influence of an intoxicant or while having a prohibited alcohol concentration, that offense is counted as a prior OWI offense and the court is required to revoke the person's operating privilege for two years.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 SECTION 1. 343.30 (1q) (b) 3. of the statutes is amended to read:

2 (C) 343.30 (1q) (b) 3. Except as provided in subd. 4m., if the number of convictions
3 under ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total number of other
4 convictions, suspensions and revocations counted under s. 343.307 (1) within a
5 10-year period, equals 2, the court shall revoke ~~the person's operating privilege for~~
6 not less than one year nor more than 18 months. After the first 60 days of the
7 revocation period, the person is eligible for an occupational license under s. 343.10
8 if he or she has completed the assessment and is complying with the driver safety
9 plan ordered under par (c).

10 SECTION 2. 343.305 (10) (b) 3. of the statutes is amended to read:

11 (C) 343.305 (10) (b) 3. Except as provided in subd. 4m., if the number of convictions
12 under ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total number of other
13 convictions, suspensions and revocations counted under s. 343.307 (2) within a
14 10-year period, equals 2, the court shall revoke ~~the person's operating privilege for~~

1 2 years. After the first 90 days of the revocation period, the person is eligible for an
2 occupational license under s. 343.10 if he or she has completed the assessment and
3 is complying with the driver safety plan.

4 SECTION 3. 343.31 (3) (bm) 3. of the statutes is amended to read:

5 ^{Insert 19-2} 343.31 (3) (bm) 3. Except as provided in subd. 4m., if the number of convictions
6 under ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total number of
7 suspensions, revocations and other convictions counted under s. 343.307 (1) within
8 a 10-year period, equals 2, ~~the department shall revoke the person's operating~~
9 privilege for not less than one year nor more than 18 months. ^{Keep "the"} If an Indian tribal court
10 in this state revokes the person's privilege to operate a motor vehicle on tribal lands
11 for not less than one year nor more than 18 months for the conviction specified in par.
12 (bm) (intro.), the department shall impose the same period of revocation. After the
13 first 60 days of the revocation period, the person is eligible for an occupational license
14 under s. 343.10.

15 SECTION 4. 346.65 (2) (b) of the statutes is amended to read:

16 346.65 (2) (b) Except as provided in par. (f), shall be fined not less than \$300
17 ~~nor more than \$1,000 and imprisoned for not less than 5 days nor more than 6 months~~ ^{CCC}
18 if the total number of prior convictions under ss. 940.09 (1) and 940.25 in the person's
19 lifetime, plus the total number of prior suspensions, revocations and other
20 convictions counted under s. 343.307 (1) within a 10-year period, equals 2 within a
21 10-year period. ~~Suspensions, revocations or convictions arising out of the same~~
22 incident or occurrence shall be counted as one.

23 SECTION 5. 346.65 (2j) (b) of the statutes is amended to read:

24 346.65 (2j) (b) Except as provided in par. (d), shall be fined not less than \$300
25 nor more than \$1,000 and imprisoned for not less than 5 days nor more than 6 months

ASSEMBLY BILL 665

SECTION 5

1 " if the ~~total~~ number of prior convictions under ss. 940.09 (1) and 940.25 in the person's
2 lifetime, plus the total number of prior other convictions, suspension and revocations
3 counted under s. 343.307 (2) within a 10-year period, equals 2 ~~within a 10-year~~
4 period. " .

SECTION 6. Initial applicability.

6 (1) This act first applies to offenses committed on the effective date of this
7 subsection, but does not preclude the counting of other convictions, suspensions or
8 revocations as prior convictions, suspensions or revocations for purposes of
9 administrative action by the department of transportation or sentencing by a court.

10 (END)

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRBa1773/1dn
RPN:kmg:hmh

March 13, 2000

*and replaces the counting
language in 9.343.307(4) with the
counting used in Rep. OOI's bill,
AB 665*

This draft includes all of the technical, clean-up language, ~~but, the draft~~

1. Removes the language allowing a person to "start over" if he or she has 10 years without any OWI offense.
2. Removes the language requiring the counting of all OWI offenses once the person has 3 or more offenses within a 10-year period.

This draft, with those 2 provisions removed, and ~~nothing added to the draft~~, means that all OWI offenses occurring after December 31, 1988, will be counted for the rest of the person's lifetime and all OWI-death and OWI-great bodily harm convictions will be counted for the person's lifetime including those that occurred before December 31, 1988. Is that what is wanted?

*I did a new amendment because changing a/?? at this
time is difficult*

Robert P. Nelson
Senior Legislative Attorney
Phone: (608) 267-7511

Additions

a/776/

Ins. 21-11

✓ #. Page 21, line 11: delete "(4)".

Ins.
24-7

✓ #. Page 24, line 17: delete "(4)".

Ins.

36-25

#. Page 36, line 25: delete "342307(4)".

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRBa1776/1dn
RPN:kmg:hnh

March 13, 2000

This draft includes all of the technical, clean-up language and replaces the counting language in s. 343.307 (4) with the counting used in Representative Ott's bill, AB-665.

I did a new amendment because changing LRBa1773 at this time is difficult.

Robert P. Nelson
Senior Legislative Attorney
Phone: (608) 267-7511

Put in a 1996 file

Senate Bill 125

Analysis by John Sobotik, WISDOT
March 11, 2000

In this memo:

- ⇒ Unless otherwise indicated, "OWI," includes :
 - Operating while intoxicated
 - Operating with a BAC above .08 or .10
 - Injury by intoxicated use of a motor vehicle
 - Great bodily harm by intoxicated use of a motor vehicle
 - Homicide by intoxicated use of a motor vehicle
 - Refusal of chemical testing.
- ⇒ "ROAS" means Repeat Offender Absolute Sobriety Law (proposed 346.657)
- ⇒ "Underage Drinking Offense" means an offense related to the consumption or attempted consumption of alcoholic beverages by a person under age 21. It includes entering or attempting to enter a licensed premises, such as a tavern. It does not include alcohol violations committed by underage persons while driving a motor vehicle.
- ⇒ "10 Year Counting Period Amendment" means an amendment related to the new counting scheme for past OWI offenses in this bill.

Proposed OWI Counting Rules Changes

This bill proposes to change the counting provisions related to OWI offenses.

Current law:

1. Court counts all OWI offenses on driver record since 1/1/89.
2. If 2 or more offenses, charge with 2nd or subsequent offense.
3. If only 1 offense, determine whether OWI is within past 10 years.
4. If only OWI is within 10 years, charge with 2nd offense OWI.
5. Otherwise, only offense is more than 10 years past: charge with 1st offense OWI.

Proposal in this bill:

1. Court examines record to see if there are 3 OWI offenses in any 10 year period on driver's record since 1/1/89. Court counts all 3 offenses and any subsequent offenses if there are 3 in any 10 year period. [343.307(4)(b)]
2. Court examines record of any Great bodily harm or Homicide by intoxicated use of a motor vehicle charges in the driver's lifetime that weren't counted under #1. If there are, those offenses count, too. [343.307(4)(a)]
3. Court disregards all convictions under (1) and (2) if the driver has 10 years with no OWI convictions. [343.307(4)(c)]
4. Time periods count from time of offense [343.307(4)(d)]

Apparent errors in this bill:

- ⇒ Makes no provision for counting offenses within any time period in the absence of 3 convictions in a 10 year period.

- ⇒ Legislative intent to was to count all offenses on record after 1/1/89 except no great bodily harm or homicide by intoxicated use of a vehicle convictions, which would count no matter when they occurred. If the person managed to go 10 years without an OWI conviction, offenses other than GBH and Homicide prior to that would not count.
- ⇒ This draft does just the opposite. Nothing counts unless the person gets 3 in 10 years. All offenses including homicide and GBH are uncountable after a 10 year clean period.

Policy Discussion

This counting proposal substantially complicates the rules used to determine whether a prior drunk driving offense counts as a prior offense for OWI sentencing purposes. This rule needs to be simple and this bill proposes to make the rule extremely complicated. (As evidenced by the fact that this bill draft does not meet with the requests of the drafters).

OWI law is only effective if the police enforce it. Anything the legislature does to discourage enforcement will raise OWI numbers. Police will not enforce the law if they can't understand and apply it easily. This proposal is VERY difficult to understand conceptually and nearly impossible to apply on a day to day basis.

In addition, the requested proposed counting rules may make the law unconstitutional because it will result in arbitrary and illogical distinctions between offenders. While the legislature can make logical distinctions between offenders when deciding sentences for criminals, it cannot make rules that do not logically relate to the purpose of the legislation. This proposed rule produces illogical results.

Consider these 2 driver records:

Proper Charge	Driver 1
1 st offense	1/1/1990 OWI
2 nd Offense	12/1/1999 OWI
3 rd Offense	6/1/2000 OWI
4 th Offense	4/1/2010 OWI Arrest

Proper Charge	Driver 2
1 st offense	1/1/1990 OWI
2 nd offense	1/15/1990 OWI
1 st offense	2/1/2000 OWI
2 nd offense	3/1/2000 OWI
1 st offense	4/1/2010 OWI Arrest

In this scenario, driver 1 and 2 have very similar driver records. Both were first arrested for OWI on 1/1/1990 and both were convicted multiple times between 1990 and April 1, 2010, when they were both arrested for drunk driving yet again.

Driver 1, however, is facing charges for 4th offense OWI with 60 days to 2 years imprisonment, \$600 to \$16,000 fine (using the BAC enhanced fine provision in this bill [\$2000 quadrupled for BAC & doubled for minor in vehicle]), 24 to 36 month license revocation, and possible vehicle seizure. IID requirements and immobilization.

Driver 2, on the other hand, will get a traffic ticket for which he will not even be required to appear in court.

Of course, over the course of the 20 year period, driver 2 has been convicted of 5 drunk driving offenses, while driver 1 was only convicted of 4. The difference is he managed to commit his offenses in spurts and leave 10 years between some of them.

This is illogical and unequal treatment of defendants, and a court may well overturn the law on that basis.

DOT recommends the legislature NOT make any changes to the OWI sentencing structure. If there is feeling that OWI convictions should NOT be counted over a person's life, then a standard shorter period over which offenses should count should be established. For example, the legislature could simply provide that offenses count for a straight 10, 15, or 20 years. Any of those choices will be more effective than a complicated rule that law enforcement cannot understand and that provides unequal and uncertain justice to defendants.

Other Issues of Note

⇒ ROAS (Repeat Offender Absolute Sobriety) Offense

- Idea is to provide a forfeiture for a BAC above 0.0 for a repeat offender, but leave them subject to OWI law if they are actually drunk. Eliminates problem with OWI offender doing years of jail time for OWI because of eating rum cake or taking cough syrup and having a BAC above 0.0. Level could be set at .02 if this is a concern.
- Bill provides this is not lesser included offense of OWI. That prevents potential problem of every repeat OWI case will going to trial because defense hopes jury splits baby and convicts of lesser offense than OWI.
- Bill prohibits primary enforcement of new ROAS law. That means that if police get a phone call telling them that a known repeater is out driving after drinking, they cannot legally stop the vehicle. **This is unnecessary and unwise because:**
 - ◇ The police already need a reasonable suspicion to justify a stop for this violation under the law.
 - ◇ The likelihood is that this will REDUCE enforcement of OWI offenses against repeat offenders because the defense will argue any stop to enforce the OWI was an illegal ROAS stop.
- Bill prohibits conviction for OWI after a plea to this offense.
 - ◇ This is unwise because it will undermine the entire OWI system. A person will escape criminal OWI penalties by quickly pleading guilty to ROAS offense in a muni court.
 - ◇ A wiser approach would be to allow conviction on either or both offenses but have any penalties or driver license sanctions assessed for any OWI conviction arising out of the same incident or occurrence reduced. Permit clerk to adjust OWI sanctions automatically upon proof of payment of ROAS forfeiture.
 - ◇ It would be OK to prohibit conviction on ROAS after an OWI conviction, but permit ROAS conviction on OWI acquittal or OWI charge after ROAS conviction or acquittal.
 - ◇ There is no reason to set an upper limit of .08 BAC level on ROAS offenses. This will only leave courts with the possibility of getting no conviction at all for a driver who tests close to .08. (For example, if test shows .081 result, curve defense could raise reasonable doubt about being above .08 in OWI case, while test card showing .081 could lead to dismissal of ROAS charge if law is left as is.)

Nelson, Robert P.

From: Sobotik, John
Sent: Monday, March 13, 2000 11:22 AM
To: Rossmiller, Dan; Nelson, Robert P.; Sklansky, Ron
Cc: Clark, Julie
Subject: SSA to SB125

I have completed a section by section analysis of the bill. A copy is enclosed.

Several items merit serious attention:

- The repeat offender absolute sobriety (ROAS) law has some provisions in it that could seriously impact the ability to convict repeat OWI offenders: (1) a prohibition on prosecution for OWI if the person is found guilty of the absolute sobriety forfeiture, and (2) the primary enforcement prohibition. If these provisions remain in the draft, they will create more problems than they solve.

The double prosecution provision means that a repeat offender can avoid conviction for repeat OWI by pleading to an absolute sobriety violation first. It would be better to simply provide for crediting of the ROAS forfeiture on the OWI fine.

The primary enforcement provision of this bill will mean that police cannot stop a known repeat OWI offender after receiving a tip that he/she is driving after drinking. I expect that IF this provision remains in the law many repeat OWI offenders will be challenging the legality of the stop leading to their current repeat OWI arrest. Why not? If the stop is found by a court to be for ROAS, their arrest for 4th, 5th, 6th offense OWI will be tossed out of court. It would be virtual malpractice for attorneys not to raise this defense in virtually every repeat OWI case.

Primary enforcement restrictions make sense in some situations to prevent discriminatory enforcement of laws for reasons other than traffic prevention. In that context, prohibiting primary enforcement of the seatbelt law is perceived as reducing stops for "driving while black." Police have NO way of discerning, however, whether a driver is a 3 time drunk driver based on his or her race. Prohibiting primary enforcement of this law will not assist at all in the fight against discriminatory law enforcement practices, but will provide a legal loophole through which repeat OWI offenders will avoid the consequences of their crimes.

The provision that prohibits an ROAS conviction if the person has a BAC above .08 also causes problems in the draft. There are ROAS provisions drafted into the administrative suspension law, although there is no way a person could be convicted of ROAS (BAC between 0.0 and 0.08) and be administratively suspended (BAC of 0.08 or above).

The prohibition on counting ROAS refusals is also problematic. There is no way to count them separately under today's database systems, and there is no practical way in the real world for courts to figure out whether something is an OWI or an ROAS refusal. (You can't use BAC, because you don't know it -- the guy refused testing!) I would urge legislators to remove this provision from the final bill.

- The counting provisions for past offenses does not work the way people described them working in our meeting last week. This is not surprising. Personally, I question whether a law that is so complicated to explain and to write will have the effect of discouraging law enforcement efforts. When officers count wrong under these proposed rules (and they will), they may seek to avoid future embarrassment by not writing OWI tickets.

At a minimum, the provision needs to be fixed to (1) not count OWI offenses from before 1/1/80 except 940.09 and 940.25 violations and (2) count all offenses on a driver record if there is no 10

year clean period, and all offenses after any 10 year clean period.

- Prohibiting municipal courts from order 1st offense OWI offenders to appear in court may be overkill. The reason for the current law requiring mandatory appearance is to give the 1st offender the "feel" of being charged with a very serious offense. Technically, no appearance is required constitutionally because the offense is only a forfeiture. Milwaukee apparently does not like having to deal with first offense drunk drivers in municipal court and would like the mandatory appearance requirements removed from the statute.

The solution this bill draft provides is to prohibit municipal courts from ordering 1st offenders from appearing before them. Not all municipal courts may share Milwaukee's view on this issue, and it may be that the legislature could allow courts to decide whether to require an appearance on a court-by-court basis instead of flatly prohibiting municipal courts from requiring an appearance. Moreover, someone could then study whether court appearances have any impact at reducing noncompliance and/or recidivism.

- There "higher fines for higher BAC level" provisions create their own set of problems under the law. We've discussed these before and the problems are described in the attached analysis.
- The mailing notice provisions of the new immobilization law might be rewritten to lessen the administrative burden of certified mailings. There is little reason to certify mailings to defendants: they won't go to the post office to pick them up, and they already know their car is being immobilized from the court's decision at which they had to be present, from seeing the physical device attached to their car, and from working with the officer attaching the device. Actual written notice to lienholders ought to be sufficient in lieu of certified mailings in most cases. In small towns, where the bank is next door to the police station, why should the police be required to mail the notice via certified mail as opposed to walking it next door? Similarly, if the police fax the information to a lienholder, why should they have to mail it by certified mail, too?
- References to sending IID related information to treatment providers should be changed to assessment agency. It is the assessment agency that decides whether a person is in compliance with a driver safety plan.

I hope this analysis is helpful to you. Let me know if I can be of further help.

- John Sobotik

John Sobotik
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03/13/2000

SB125 Sec.	Statute Affected	Purpose	Issues/Problems	Eff. Date (if not 1/1/01)
12, 4, 63-65, 89	20.395(5)(e) 20.435(6)(ix) 85.55 346.655(1),(2) (a) and (b)	Create and fund a safe rider program. DOT to provide \$314,700 funding for local units of government OR non-profit organizations. Non-profit organizations added to provide funds to local tavern leagues.	\$5 additional fee added to OWI penalties under s. 346.655	
3	51.30(4)(b)25.	Permits alcohol treatment providers to share information with police and dept. of corrections regarding driver safety plan noncompliance. (see sec. 13 below)		
5	110.07(3)	Allows DOT State Patrol inspectors to enforce new Repeat Offender Absolute Sobriety ("ROAS") law.		
6	110.10	Requires WISDOT to take lead in establishing a statewide IID program. Requires WISDOT report IID violations to alcohol treatment providers.	Reference to treatment providers should be to assessment agency.	eff. 10/1/2000
7, 8, 9, 10	125.07	Makes driver license suspensions mandatory for 2 nd and subsequent offense underage drinking IF the incident involved a motor vehicle (non-driving, but motor vehicle related - i.e. passenger possession, or tailgate drinking)		
11	125.07	Restricts court's ability to stay license suspension based on good behavior where underage drinking involved a motor vehicle.		
12, 77	168.83(2)(e), 800.03(4)	Repeals Mandatory OWI court Appearance. Sec. 12 Repeals requirement that DOJ track unserved arrest warrants for failure to appear in Muni court on a drunk-driving matter.	This may lead to more problems getting drivers into assessment and treatment. It also may lead to increased recidivism.	
		Sec 77 prohibits municipal courts from requiring drunk drivers to appear personally before them. (Caselaw says Muni courts do not have authority to require appearance without statutory authority.)	Might be wiser to make mandatory appearance up to the municipal court and study recidivism rates between courts that do and don't change this practice.	
13	303.065	Requires a person imprisoned on a felony alcohol-driving charge to be in compliance with a treatment plan as a condition of work release. (authority to share info in s. 3)		
14, 15	303.08(1)(cg)	Permits OWI offenders to attend assessment and treatment under the Huber law work release system.		
16	303.08	Prohibits Huber release for OWI offenders who are not in assessment & treatment programs.		
17	343.10(5)(a)3	Technical change due to new IID law changes.		Eff. 1/1/2002

DOT

X

SB125 Sec.	Statute Affected	Purpose	Issues/Problems	Eff. Date (if not 1/1/01)
18	343.10	Establishes 15 day waiting period for occupational license after an ROAS offense.	Not needed. 15 days is normal wait under s. 343.10(2)(a)4.	X
19	343.23	Codifies WISDOT practice of retaining OWI records for the life of the driver. Requires WISDOT to retain records even though they may not be countable under criminal law. Inures future legislators can use all post 1/1/89 offenses in counting if they decide to do so in future years.	Requires WISDOT create a new form of abstract to deal with new counting provisions for courts and police, but also retain all abstracts for older records requests. Cost unknown.	X
20	343.30	Renumbering		
21	343.30(1p)(b)	Provides for 6 month court ordered suspension following ROAS conviction.		
22, 23	343.30(1q)(b) 3.	10 year counting period amendment.		
24	343.30	Provides for reduction of 346.657 suspension by time served under any administrative suspension for the same offense.	How can this happen if the BAC for the offense must be below the BAC for administrative suspension? We recommend no ceiling on ROAS violation, i.e. above 0.0, not 0.0 to .08. Then this provision works.	X
25	343.30(6)	Sets mandatory license penalties for underage drinking offenses involving a motor vehicle.		
26	343.301	Rewrites statutes related to program for ignition interlock devices and vehicle immobilization. 2 nd offense and subsequent offense OWI either or both is optional. Minimum sanction period is length of driver license revocation. Maximum periods of either sanction is the maximum period of possible revocation under statute. [For example, on 4 th offense OWI, where operating privileges are revoked for 2 to 3 years, court could order 2 year revocation and 3 year IID.] Offenders pay cost of devices. A person violates IID restriction by having another person blow for them. Immobilization orders for specific vehicles sent to DOT and added to vehicle record. Law enforcement must send certified letters to lienholders of record and to owner of car when it is immobilized.	No reason to send letter to owner of car. Defendant is owner, he knows from criminal sentencing that the car will be immobilized. No reason for lienholder letter to be certified mail. Any form of actual written notice to lienholder should be adequate. letter, fax, telegram, personal service.	9/1/1/2002 X X
27	343.303	Permits PBT use for ROAS violations.		
28, 29, 30	343.305(3)(a), (b) and (3)(b)	Implied consent type testing permitted for ROAS offenses.		
31	343.305(8)(c) 1	Driver may appeal WISDOT administrative suspension hearing.	How would there ever be such a hearing if the person cannot	X

SB125 Sec.	Statute Affected	Purpose	Issues/Problems	Eff. Date (if not 1/1/01)
		Hearing heard with any ROAS case.	have a BAC > .08 if charged with ROAS, but must have a BAC > .08 for an administrative suspension?	
32, 33, 34	343.305(9)(a), 1., 5.a., and (d)	Adds ROAS offense into refusal portions of the administrative suspension law.		
35, 36	343.305(10)(b)	Counting provision moved into 343.307.		
37	343.305(10)	12 month revocation for refusal on ROAS arrest. Double if with child in car. 15 day wait for occupational license. Refusals DONT count as prior OWI's.	Refusals SHOULD count under 343.307(1), because there is no way to know the actual BAC without the test. If the guy submits to the test and is <.08, he gets ROAS conviction that doesn't count. If he refuses, it should count. Provides incentive to take the test. Could be costly and time consuming to implement new change in DOT system for ROAS refusals if they aren't treated like any other refusal.	
38	343.305(10m)	Provides for optional IID or immobilization after 1 st offense refusal and optional seizure after 3 rd offense refusal.		eff. 1/1/2002
39	343.307(4)	Counting provisions related to past OWI offenses	This whole section has problems. See discussion at beginning of paper. Draft does not meet expressed intent.	
40, 41	343.31(3)(bm)	OWI Counting provision amendments		
42	346.63(2m)	Amends cross reference to underage drinking license sanctions.		
43	346.65(2)(b)	Raises fines for 2 nd offense OWI by 10% Now: \$300 - \$1000 This bill: \$350 - \$1100		
44-46	346.65(2)	Amends fines for 3 rd offense and above OWI. Now, on these offenses, fines accelerate based on BAC as follows: .17 - .199 = double fine .20 - .249 = triple fine .25 and above = quadruple fine	Presents several problems. (1) Provides incentive to refuse chemical testing because fine will always be minimum. We want to encourage people to submit to test, not discourage them. (2) Will force jury to conclude exact BAC at time of driving. This will be time consuming at trial to very little benefit. Alcohol curve defenses will be part of almost every repeat OWI trial. (average BAC at OWI arrest is <.17?) Expect	

SB125 Sec.	Statute Affected	Purpose	Issues/Problems	Eff. Date (if not 1/1/01)
			<p>DA's, State Patrol and State Hygiene lab to need additional staff to provide prosecutors and expert witnesses for more complex trials. Expect increased requests for additional circuit courts because of increase length complexity and number of OWI trials. Author has discussed with Milw., Brown, Dane and Grant Co. DA offices. None like this proposal.</p> <p>(9) Many of these fines go unpaid now. This may increase the amount of unpaid fines without any beneficial payoff in terms of reducing recidivism or decreasing drunk driving.</p>	
48	346.65(2c)	Time counting provisions moved to 343.307(4).		
49	346.65(2e)	Amends provisions regarding fine reduction for treatment plan payments to apply to the double-triple-quadruple penalty structure created in ss. 44-46		
50-53	346.65(2g)	Provides that a person who has some ability to pay OWI fines may pay them via community service. Provides that persons who lack the ability to pay MUST pay them via community service.	State Bar contends this may run afoul of constitutional prohibition on slavery. They contend the state cannot force a person to work without pay.	
54-55	346.65(2)(b), (2w)	Counting provisions for OWI moved to s. 343.307(4)		
56	346.65(6)	Makes seizure applicable only to vehicle driven in 3 rd and subsequent offense OWIs. Brings statute into compliance with Supreme Court decision in State v. Konrath.		eff. 1/1/2002
57	346.65	Eliminates mandatory seizure of motor vehicles on 4 th offense. Law enforcement requests this because the vehicles are often junk.		eff. 1/1/2002
58	346.65(6)	Eliminates title branding requirements in this section related to IIDs and Immobilization orders.	342.12 also needs to be cleaned up. (3 or more)	eff. 1/1/2002
59-60	346.65(6)	Removes IID and immobilization language from various 346.65(6) provisions.	Need to remove similar provisions from s. 346.65(6)(k) and (m). 346.65(6)(m) may be repealed. 346.65(6)(e) should have the 50% reference removed. It incorrectly assumes a vehicle	eff. 1/1/2002

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(c)(1) or
(c)(2)

Y?

Y
Y

No

SB125 Sec.	Statute Affected	Purpose	Issues/Problems	Eff. Date (if not 1/1/01)
			only has 2 owners. The distribution of proceeds rules make some sense if you get rid of it.	
61	346.65(6)	Clarifies that proper venue for vehicle seizure proceeding is county where driver was convicted.		eff. 1 st day of 2 nd month after publicatio n
62	346.65(6)	Requires state prove seized vehicle was used in OWI offense for which driver was convicted.		eff. 1/1/2002
63-65	346.655	Imposes additional \$5 fee to fund safe rider programs. See section 1 above.		
66	346.657	(1) Creates new Repeat Offender Absolute Sobriety ("ROAS") offense. Repeat offender gets citation for driving with ANY alcohol in his system whatsoever. Intent was to have him get OWI citation if drunk. (2) Prohibits primary enforcement of ROAS law. (3) Prohibits conviction for OWI if the person first pleads guilty to ROAS charge or conviction for ROAS if person is convicted first of OWI out of same incident.	(1) Change driver safety plan program reference to assessment agency. (2) Primary enforcement prohibition means that if police get a phone call telling them that a known repeater is out driving after drinking, they cannot legally stop the vehicle. This is unnecessary and unwise. The police need a reasonable suspicion to justify a stop for this violation under the law. The likelihood is that this will REDUCE enforcement of OWI offenses against repeat offenders because the defense will argue any stop to enforce the law was illegal. (3) Prohibiting conviction for OWI after a plea to this offense would undermine the entire OWI system. A person could escape criminal OWI penalties by quickly pleading guilty to this offense in a different court. A wiser approach would be to allow conviction on either or both offenses but have any penalties or driver license sanctions assessed for any OWI conviction arising out of the same incident or	

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SB125 Sec.	Statute Affected	Purpose	Issues/Problems	Eff. Date (if not 1/1/01)
			occurrence reduced. Permit clerk to adjust OWI sanctions automatically upon proof of payment of ROAS forfeiture	
67-69	346.93, 346.95(2)	Provides for license suspensions of underage persons convicted of alcohol possession in a motor vehicle. Establishes \$20 - \$400 forfeiture for this offense.	Drafting style: There is no sub. (a).	X
70	347.413	Prohibits IID circumvention or tampering under new IID law as well as old law.		
71	347.413	Rulemaking Authority for WISDOT on IID program moved to s. 110.10, Stats. by s. 6 of this act.		
72	347.417	Prohibits tampering with immobilization device under this law or old law.		eff. 1/1/2002
73	347.417	Warning label required on immobilization devices under this law and old law.		eff. 1/1/2002
74	349.03	Allows muni court to order license suspension for ROAS offense.		
75	349.03	Allows police to travel across jurisdictional boundaries to enforce ROAS law.		
76	349.06	Allows muni courts to order license suspension for ROAS offenses.		
77	800.03(4)	Repeals requirement that first offense OWI offenders appear in court just like they would have to do if OWI was a criminal offense. Repeals muni court authority to make an OWI offender appear in court.	May lead to more problems of non-compliance and non- payment. May lead to decreased deterrent effect of law. No reason why municipal court could not retain authority to order OWI offenders into court on a court by court basis.	eff. 1 st day of 2 nd month after publicatio n Y
78- 79	885.235	Technical provisions related to chemical testing in ROAS cases.		
80-83	938.344	Makes license suspension mandatory in 2 nd and subsequent underage drinking violations if offense involved motor vehicle.		
84-87	940.09, 940.25	Provides for IID, seizure or immobilization after felony OWI offenses of Great Bodily Harm or Homicide by Intoxicated Use of a Motor Vehicle.		ss. 85 & 87 eff. 1/1/2002
88	Nonstatutory	DOT, DOC, DHFS to study: - treatment programs - IIDs DOT to submit rules on IIDs by 2/1/2001 and promulgate by 11/20/2001.		Rules provisions effective 10/1/2000
89	Nonstatutory	Appropriation of \$314,700 for safe rider program.		
90	Initial Applicability			s. 90(3) eff. 1/1/2002
91	Effective			